



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 21, 2006

Benjamin L. Ginsberg, Esq.  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, D.C. 20037-1350

Dear Mr. Ginsberg:

Please be advised that the Commission has dismissed your request for an advisory opinion (AOR 2006-32) on behalf of Progress for America Voter Fund ("PFA Voter Fund") and Progress for America ("PFA") because the request appears to concern past action, rather than present or intended activity, and other portions of the request are incomplete. Thus the request does not satisfy the requirements of section 437f(a)(1) of the Federal Election Campaign Act (the "Act") and Commission rules at 11 CFR 112.1(b) and (c) regarding advisory opinions.

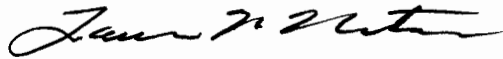
The Act authorizes the Commission to issue an advisory opinion in response to a complete written request from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a)(1). Commission regulations state that the request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). Thus, requests concerning predominantly or exclusively past action do not qualify for advisory opinions. The regulations also state that a request posing a hypothetical situation does not qualify as an advisory opinion request. *Id.* The regulations require that the requestor provide "a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c).

PFA Voter Fund and PFA asked whether disbursements for two advertisements planned for broadcast and dissemination through other media will be "expenditures" under the Act, whether other proposed communications will solicit "contributions" under the Act, and whether certain spending projections and other activities will satisfy the major purpose test, which operates as a constitutional limit in determining whether an organization must register and report as a political committee. In September 2006, the two organizations represented that the proffered advertisements would be aired before November 4, 2006, and that the same ads would be broadcast and distributed through other means in 2007 and through the general election in 2008. Additionally, PFA Voter Fund represented that by November 4, 2006, it intended to spend the bulk of its annual budget on these two advertisements.

Based on the Commission's review of publicly available information, including reports filed with the Commission and the Internal Revenue Service, it appears that the two advertisements identified in the advisory opinion request were not aired through broadcast media prior to the November 7, 2006 election. Consequently, the spending projections for 2006 that hinged on devoting the bulk of this year's budget to these advertisements also did not materialize. The Commission notes that virtually identical advertisements were aired during the 2004 election season. Therefore, the request appears to concern predominantly past plans rather than present or future activity, and, as to past activities, is not appropriately addressed in an advisory opinion. 11 CFR 112.1(b). Additionally, the fact that plans projected for 2006 did not, in fact, occur, renders as remote and hypothetical projections that those same plans will continue through the 2008 election and beyond. Finally, the information presented in the request concerning the spending plans of PFA is insufficient for the Commission to draw a conclusion with respect to whether or not PFA would satisfy the major purpose test in the future. *See* 11 CFR 112.1(c).

For these reasons, the Commission has dismissed the request from PFA Voter Fund and PFA. If you have any questions, please contact Duane Pugh, Acting Assistant General Counsel, at 202-694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence H. Norton", written in a cursive style.

Lawrence H. Norton  
General Counsel